Fed. 240; *In re Ellsworth Co.*, 173 Fed. 699; *In re Douglas Coal Co.*, 131 Fed. 769; *In re Boston & Oaxaco Mining Co.*, 181 Fed. 422; *Hooks* v. *Aldridge*, 145 Fed. 864; *In re Butler & Co.*, 207 Fed. 705, 125 C. C. A. 223. A dissenting opinion in the last case contends that, as the provision in § 3a (4) relates to proceedings in courts of common law and equity, its language is the language of those courts, and "insolvency" means, as it means in such courts, inability to meet one's debts as they mature. *Beatty* v. *Anderson Coal Mining Co.*, 150 Fed. 293 seems to accord with this dissenting opinion. The action of the court in the principal case (p. 419, 420) in remanding the case to the District Court so that it may hear evidence and submit to a jury the question whether the respondent was actually insolvent when the receiver was appointed, seems clearly wrong. If, as the court decides, the state court's action was not based on actual insolvency as defined by § 1 (15), how will the District Court's possible finding of such insolvency show that the receiver was *appointed* because of insolvency? And if the state court's action was "because of" insolvency as thus defined, do we not have the act of bankruptcy, even though the District Court might disagree with the state court's finding of the fact of insolvency? In *In re Ellsworth Co.*, supra; *In re Boston & Oaxaca Mining Co.*, supra; *In re Spalding*, 139 Fed. 244; and *Moss Nat. Bk.* v. *Arend*, 146 Fed. 351, the position was taken that the bankruptcy courts were not concerned, in cases of this kind, with the question of *actual* insolvency at the time of the state court's appointment of the receiver; actual solvency or insolvency is immaterial, so long as the state court's action was "because of" such insolvency as is defined in § 1 (15). The same view is expressed in REMINGTON, BANKRUPTCY (2 ed.) § 155. There seems to be no justification in the statute for the practise, referred to in *In re Pickens Mfg. Co.*, 158 Fed. 894, on the authority of *Blue Mtn. Co.* v. *Portner*, 131 Fed. 57 and *In re Belfast Mesh Underwear Co.*, 153 Fed. 224, of allowing a hearing in the bankruptcy court on the question whether insolvency existed at the time of the state court's appointment of the receiver.

BANKRUPTCY—EQUITABLE LIEN OR VOIDABLE PREFERENCE.—Defendant advanced money to an insolvent partnership under an agreement, made in good faith, which created an equitable lien for him on brick to be manufactured by the firm. Defendant took possession of the brick when manufactured within four months of the bankruptcy of the firm, whose trustee in bankruptcy contended that this constituted a preferential transfer and was voidable within the bankruptcy act making transfers by insolvents within four months before bankruptcy voidable preferences. *Held* that defendant took possession of the brick in satisfaction of an equitable lien which related back to the date of the contract creating same and hence the transfer was not within four months before bankruptcy. *Sieg* v. *Greene*, (C. C. A. 1915), 225 Fed. 955.

The agreement or facts necessary to create an equitable lien must show an intention to create a lien. *A. T. & S. F. Ry Co.* v. *Hurley*, 153 Fed. 503, 82 C. C. A. 453. An equitable lien may attach to property to be created

and not *in esse* at the time of the agreement. *Mitchell* v. *Winslow,* 2 Story 630, Fed. Cas. 9673; *Wright* v. *Bircher,* 72 Mo. 179, 37 Am. Rep. 43. Upon this point it differs from a legal lien in that it may attach without possession of the property charged being taken. *Holroyd* v. *Marshall,* 10 H. L. Cas. 191, JONES, CHATTEL MORTGAGES, § 170. Many local statutes, however, require possession to be taken to perfect an equitable lien and when so required the federal courts will recognize it. *Thompson* v. *Fairbanks,* 196 U. S. 516, 25 Sup. Ct. 306. This latter case is cited in the principal case as an authority that where possession is taken it may relate back to the time of the contract so as to preserve equities. Other cases to the same effect are: *Humphrey* v. *Tatman,* 198 U. S. 91, 25 Sup. Ct. 567; *Sexton* v. *Kessler & Co.,* 172 Fed. 535, 40 L. R. A. 639. The cases recognize, when equity demands, the distinction between the creation of an equitable charge on property and the consummation of one that has been previously created.

BANKRUPTCY—WHEN TRUSTEE'S LIEN ATTACHES.—Possession of a chattel was transferred on a conditional sale contract. Five months later the conditional vendee filed a voluntary petition in bankruptcy, and upon adjudication the chattel passed to his trustee in bankruptcy. Shortly thereafter, the balance of the purchase price being due and unpaid, the conditional vendor applied to the court for the possession of the chattel. The contract had not been recorded until about two months before the petition in bankruptcy was filed. In the state the general rule prevailed that an unrecorded conditional sale contract is void as against a vendee's creditor who has fastened a lien upon the property by legal process. The trustee claimed that the filing within four months operated as a preferential transfer under § 60b; and also claimed a prior lien by virtue of that portion of the 1910 amendment to § 47a (2) of the Bankruptcy Act, which provides that the trustee "as to all property in the custody or coming into the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies and powers of a creditor holding a lien by legal or equitable proceedings thereon." *Held,* that there was no preference because there was no transfer, and that the trustee's lien under § 47a (2) did not attach until the filing of the petition. *Bailey* v. *Baker Ice Machine Co.,* (1915), 36 Sup. Ct. 50.

In holding that the trustee's lien under § 47a (2) does not become effective before the petition in bankruptcy is filed, the decision is in accord with the following cases: *Keeble* v. *John Deere Plow Co.,* 190 Fed. 1019; *In re Jacobson & Perril,* 200 Fed. 812; *Hart* v. *Emmerson-Brantingham Co.,* 203 Fed. 60; *In re Superior Drop Forge & Mfg. Co.,* 208 Fed. 813, 819; *Big Four Implement Co. et al.* v. *Wright,* 207 Fed. 535. These cases do not undertake, and for the most past expressly refuse, to state an opinion as to when the lien actually becomes effective. The Supreme Court, however, deliberately states that the lien becomes effective when the petition is filed. This is in accord with *Massachusetts Bonding Co.* v. *Kemper,* 220 Fed. 847, and with a dictum in *In re Farmers Co-operative Co.,* 202 Fed. 1005. In *In re East End Mantel & Tile Co.* 202 Fed. 275, is a dictum to the effect that the lien does not become effective until the trustee is appointed, and this view was taken in